

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

- - - - -x

In the Matter of:	Case No.
CHRISTINE PERSAUD,	10-44815-ess
Debtor.	

- - - - -x

ABRAHAM KLEIN, Plaintiff,	Adv. Case No.
v.	10-01228-ess
CHRISTINE PERSAUD, et al., Defendants.	

- - - - -x

ABRAHAM KLEIN, Plaintiff,	Adv. Case No.
v.	11-01456-ess
JOHN PEREIRA, Defendant.	

- - - - -x

United States Bankruptcy Court
271 Cadman Plaza East
Brooklyn, New York
March 6, 2012
10:07 AM

B E F O R E:
HON. ELIZABETH S. STONG
U.S. BANKRUPTCY JUDGE

1

2 [1] Adjourned Pre-Trial Conference re: Complaint. Adjourned
3 from: 10/19/10 11/4/10 12/14/10 1/5/11 2/2/11 3/10/11
4 4/7/11 5/20/11 6/17/11 8/16/11 9/27/11 10/28/11 11/8/11
5 11/14/11 11/28/11 12/16/11 1/25/12

6

7 [214] Adjourned Hearing on Application for Order to Show Cause
8 (RE: related document(s)[196] Motion for 2004 Examination of
9 Philip Gottehrer). Adjourned from: 9/8/11 9/13/11 9/20/11
10 9/22/11 10/28/11 11/8/11 11/14/11 11/28/11 1/25/12

11

12 [203] Adjourned Hearing on Application for Order to Show Cause
13 (RE: related document(s)[197] Motion for 2004 Examination of
14 Joel Klein). Adjourned from: 9/8/11 9/13/11 9/20/11
15 10/28/11 11/8/11 11/14/11 11/28/11 1/25/12

16

17 [201] Adjourned Hearing on Application for Order to Show Cause
18 (RE: related document(s)[198] Motion for 2004 Examination of
19 Caring Home Agency). Adjourned from: 9/8/11 9/13/11 9/20/11
20 9/22/11 10/28/11 11/8/11 11/14/11 11/28/11 1/25/12

21

22 [202] Adjourned Hearing on Application for Order to Show Cause
23 (RE: related document(s)[199] Motion for 2004 Examination of
24 Abraham Klein). Adjourned from: 9/8/11 9/13/11 9/20/11
25 9/22/11 10/28/11 11/8/11 11/14/11 11/28/11 1/25/12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[204] Adjourned Hearing on Application for Order to Show Cause
(RE: related document(s)[195] Motion for 2004 Examination of
Melquisedec Escobar). Adjourned from: 9/8/11 9/13/11
9/20/11 9/22/11 10/28/11 11/8/11 11/14/11 11/28/11
1/25/12

[179] Adjourned Motion for Violation of Automatic Stay and to
Void Certain Decisions of the State Supreme Court Issued In
Violation. Adjourned from: 9/27/11 10/28/11 11/8/11
11/14/11 11/28/11 1/25/12

[1] Adjourned Pre-Trial Conference re: Complaint. Adjourned
from: 10/28/11 11/8/11 11/14/11 11/28/11 1/25/12

Transcribed by: David Rutt

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

TROUTMAN SANDERS LLP

Attorneys for Chapter 7 Trustee, John Pereira
405 Lexington Avenue
New York, NY 10174

BY: JOHN P. CAMPO, ESQ.

MENDEL ZILBERBERG & ASSOCIATES, P.C.

Attorneys for Abraham Klein
6619 Thirteenth Avenue
Brooklyn, NY 11219

BY: MENDEL ZILBERBERG, ESQ.

JOEL LEWITTES, ESQ.

PEREIRA & SINISI, LLP

Attorneys for Chapter 7 Trustee
405 Lexington Avenue
New York, NY 10174

BY: ANN MARIE SINISI, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALSO PRESENT:

JOHN S. PEREIRA, ESQ., Chapter 7 Trustee

1 P R O C E E D I N G S

2 THE CLERK: Numbers 1 through 8 on the calendar, all
3 matters regarding Christine Persaud.

4 THE COURT: All right. We're going to start briefly
5 with this matter. We were ready to begin this matter at 9:30,
6 but the parties were not, and so the consequence is that we are
7 now penalizing people here who are on time for the 10 o'clock
8 calendar. I'm very concerned with proceeding that way. I
9 don't think it's fair to counsel who come on time. It's a
10 burden to the court, frankly, but it's our job to be here for
11 you.

12 So I'm going to get your appearances. We're going to
13 second call this matter, take the matters at the 10 o'clock
14 calendar as promptly as we can, and then we'll take you back.
15 All right? Let's get your appearances on the record.

16 MR. CAMPO: Thank you, Your Honor.

17 THE COURT: And I welcome any suggestions from the
18 parties, but I would like, when we have a matter set for 9:30,
19 and it's the only matter on at 9:30, the reason is to
20 accommodate you and to work with our entire calendar.

21 MR. CAMPO: Your Honor --

22 THE COURT: All right. Let's get your appearances on
23 the record.

24 MR. CAMPO: Yes. John Campo, Troutman Sanders, on
25 behalf of the trustee.

1 THE COURT: Thank you.

2 MR. ZILBERBERG: Mendel Zilberberg on behalf of
3 Creditor Klein with Joe Lewittis, of counsel.

4 THE COURT: Thank you.

5 MR. PEREIRA: John S. Pereira, the Chapter 7 trustee.

6 THE COURT: All right. There's some matters in these
7 first several that were set for 9:30 in which also the debtor
8 personally is --

9 MR. CAMPO: Your Honor, we understand that the issue
10 has to do with Mr. Preziosi, the debtor's counsel, who's been
11 delayed.

12 THE COURT: Okay.

13 MR. CAMPO: All the other parties were here at 9:30.

14 THE COURT: All right.

15 MR. CAMPO: So however you want to proceed.

16 THE COURT: Second call. Thank you very much.

17 MR. CAMPO: Thank you, Your Honor.

18 (Recess from 10:08 a.m. until 10:54 a.m.)

19 THE CLERK: Second call on the Persaud matters.

20 (Pause)

21 THE COURT: All right. Second call. Do we have all
22 counsel here?

23 MR. ZILBERBERG: Your Honor, I don't know if
24 Mr. Preziosi is here. That's who we were waiting for at 10
25 o'clock as well.

1 THE COURT: Is there any word as to whether we should
2 be expecting Mr. Preziosi?

3 MR. CAMPO: Your Honor, I just spoke with the debtor,
4 and the debtor says that they just -- he's still stuck in
5 court. My suggestion would be if we could move forward with
6 the matters that don't involve the debtor.

7 THE COURT: I think we have to proceed at this point.

8 MR. CAMPO: Yeah.

9 THE COURT: It's almost two hours after our designated
10 time.

11 MR. CAMPO: Right. And if --

12 THE COURT: Hour and a half, I should say.

13 MR. CAMPO: And then if Ms. Persaud wants to make a
14 motion to adjourn the matters that involve her, I'm assuming
15 Mr. Zilberberg wouldn't object.

16 MR. ZILBERBERG: Okay, I'm assuming Mr. Campo won't
17 either.

18 THE COURT: We'll do the best we can to make progress,
19 and I --

20 MR. CAMPO: We won't object to --

21 THE COURT: -- I appreciate your gracious
22 accommodation of each other's anticipated lack of objection.

23 All right. Well, I assume you've had an opportunity
24 to review the decision; it took longer than I had hoped, but
25 it's now out. You have some clarity in the representational

1 issues. As I indicated, for some time including in our
2 December hearing, there were some matters that seemed to me we
3 needed to have clarity on the representational issues in order
4 to move ahead, and so thank you for your patience --

5 MR. CAMPO: Thank you, Your Honor.

6 THE COURT: -- and also for you excellent submissions
7 which informed me greatly in rendering the decision.

8 I'd like to make all the progress that we can on the
9 many matters on the calendar, and I'm trying to think as hard
10 as I can about how we can make that progress. This is a
11 Chapter 7 not a Chapter 11 case, so we don't have status on the
12 calendar. We do have a number of individual matters, and I
13 want to begin with -- I'd like to begin with 10-1228, but
14 that's a situation where the debtor individually is a
15 defendant; it's going to be difficult to make a lot of
16 progress.

17 I will say for the record that I see on several
18 reviews of the docket the following perplexing situation: we
19 said there was a motion to dismiss; it was marked off, I
20 believe, but there is no answer, and so I'm concerned about
21 that. I don't want to go into it without counsel here, but it
22 appears to be a matter that very much needs to be addressed.

23 MR. ZILBERBERG: Your Honor, if I recall correctly,
24 and I understand the Court's sensitivity of not going into it,
25 I believe that the complaint was recently answered.

1 THE COURT: On the docket of 10-1228?

2 MR. ZILBERBERG: Klein v. Persaud, yes.

3 THE COURT: Okay. Well, we'll double-check --

4 MR. ZILBERBERG: I believe so. I'll double-check --

5 THE COURT: -- we'll double- and triple-check the
6 docket for that. I will say we looked as recently as this
7 morning as we waited for counsel to appear, and all I could --

8 MR. ZILBERBERG: Your Honor --

9 THE COURT: -- but we'll look into it.

10 MR. ZILBERBERG: Your Honor, I will check in my
11 office, and if by letter or otherwise I can -- with
12 notification to Ms. Persaud's counsel, I'll respond if we find
13 or don't find that the complaint has been answered.

14 THE COURT: Well, I would expect to hear from
15 defendant's counsel with respect to an answer, not from
16 plaintiff's counsel, but I'll take the information however we
17 can get it. All right. So we'll come back to that.

18 The next series of items on the calendar are the 2004
19 examination requests which were the subject of some orders
20 granting relief in part focused on documents that seem to me
21 the appropriate starting point, and ending point I don't know;
22 that's the question for today. There's been some time since
23 those applications were made.

24 I'd like to hear from trustee and trustee's counsel as
25 to whether -- as to what the status is, whether you're seeking

1 additional relief including whether you're seeking testimony.
2 It seems to me that, in view of the passage of time and also,
3 hopefully, the opportunity to review whatever documents have
4 been produced, it may be appropriate to narrow both the number
5 of requests and the extent of the relief you're seeking. If
6 you're still seeking additional examinations, I ask you further
7 to brief what you are now seeking.

8 When I see a matter that was originally heard back in
9 September, when I think about how much has transpired and the
10 fact that you have had, presumably, documentary examination
11 through the responses to the orders that I entered, I wonder
12 what makes sense.

13 Mr. Campo, let me hear from you.

14 MR. CAMPO: Thank you, Your Honor. And let me start,
15 Your Honor, by saying that while we all are very grateful with
16 respect to the amended order that Your Honor had entered, which
17 really gave very good clarity and specificity to exactly what
18 was to be produced, and then, of course, it required the
19 production of those documents and then continued the
20 application for a hearing in connection with, among other
21 things, the examination. But unfortunately, Your Honor, I have
22 a list of documents -- and Your Honor, you can refer to your
23 own orders. They were all entered -- the amended orders were
24 all entered on November 10, and if I could refer you to, for
25 example, the Caring Home Care agency order, the amended order

1 that you entered.

2 THE COURT: No, but tell me the number on the docket.

3 MR. CAMPO: I don't have the docket number, Your
4 Honor, but I know it was dated --

5 THE COURT: I have the motion file. I'm sure I'll be
6 able to find it.

7 MR. CAMPO: Yeah. Let me see if I have a docket
8 number.

9 THE COURT: I have the amended order before me.

10 MR. CAMPO: Yes.

11 THE COURT: It's number 296 on the docket.

12 MR. CAMPO: Correct, Your Honor. I just found it. I
13 found a copy with the docket number on it.

14 THE COURT: So where do we stand on this?

15 MR. CAMPO: Well, where we stand, Your Honor,
16 unfortunately is, is you can see what was requested -- I'm
17 sorry -- what was directed to be produced. And Your Honor,
18 particularly if you could focus on the fact of what was -- the
19 categories of all the documents were supposed to be produced
20 for the period from January 1 of '08 through May 26 of '10. We
21 all understood why Your Honor used the May 26 date, because
22 that was the date of the debtor's filing of her Chapter 11
23 proceeding, and it requested a list of twelve lists of types of
24 documents.

25 The documents that were produced, Your Honor, were

1 limited to the following: a January 2008 bank statement for
2 one account and copies of checks during the month of January
3 2008. I would point out to you, Your Honor, those were the
4 times that the debtor was operating Caring. We're not really
5 interested in -- I mean, we all understand -- I mean, while we
6 want those documents, that was one month we got. We then
7 got --

8 THE COURT: Well, responsive but incomplete, seems to
9 be the suggestion.

10 MR. CAMPO: Incomplete --

11 THE COURT: Have you had an opportunity to confer with
12 Caring's counsel on this?

13 MR. CAMPO: We have, Your Honor.

14 THE COURT: I understand that because of the ambiguity
15 with res -- well, because of the pendency of the retention
16 motion, there may have been --

17 MR. CAMPO: Correct.

18 THE COURT: -- some limitations, but --

19 MR. CAMPO: Yeah.

20 THE COURT: -- you know, in the first instance,
21 document production issues should be conferenced between
22 counsel, and in most instances, they should be resolved between
23 counsel.

24 MR. CAMPO: Agreed, Your Honor. And we only had our
25 first opportunity to speak this morning, since the order was

1 entered yesterday, that --

2 THE COURT: I understand.

3 MR. CAMPO: We understand that. And I spoke with
4 Mr. Zilberberg, and he's telling us that there's a series of
5 some additional documents to be delivered, but what I would ask
6 Mr. Zilberberg to tell us is exactly what's being delivered
7 that going to be responsive to what Your Honor has already
8 entered and directed.

9 THE COURT: Mr. Campo, it's a great question, but I
10 think the parties should deal with it not on the record.

11 MR. CAMPO: Okay, Your Honor. We'll be happy to deal
12 with that but --

13 THE COURT: You know, I certainly bear some
14 responsibility having only gotten you this decision yesterday,
15 but --

16 MR. CAMPO: It's okay, Your Honor. Nobody's --
17 there's no fault to the Court here at all. It's clearly
18 something that we want a time frame for when -- when are these
19 documents going to be delivered.

20 THE COURT: Well, let's -- Mr. Campo, remember what I
21 just said, please.

22 MR. CAMPO: All right. I will, Your Honor, but --

23 THE COURT: Good try, though.

24 MR. CAMPO: -- I'll try.

25 But, Your Honor, one of the things that we need to do

1 is, in terms of moving these 2004s forward is to, one, get the
2 documents that the Court directed, which I'll work with
3 Mr. Zilberberg to make sure we get them, and we'll confer, but
4 then the second phase, Your Honor, is -- frankly, is we're
5 going to need to examine the 2004s.

6 THE COURT: You know, you need to look at the
7 documents and see who you need to examine. You've got six of
8 these, I think. It may be you need some but not all of these
9 examinations. That's the process I'd like to see under way.
10 You've helped me with an additional perspective on this which
11 is that the kind of productive conferencing that typically
12 happens among counsel with respect to document issues has only
13 really just begun because of the counsel situation, but now
14 that it has begun, how much time would you like to try to
15 resolve all the document issues? I'll give you a couple weeks,
16 if that makes sense; I'll give you a month, if that makes
17 Sense.

18 MR. CAMPO: Well, Your Honor, I would hope we could --

19 THE COURT: But then we'll come back for --

20 MR. CAMPO: -- I hope we could resolve it within a
21 week, and we would like to come back on a shorter time frame
22 only because if we're -- we're going to know quickly whether
23 we're going to have issues in terms of what's being produced.
24 It's not like the respondents to the 2004s haven't had months,
25 literally months now. You entered this order in November, and

1 it's now March.

2 MR. ZILBERBERG: Your Honor, if I may speak for a
3 moment. We have produced approximately 5,000 documents. I
4 told Mr. Campo this morning --

5 THE COURT: Is that pages or documents?

6 MR. ZILBERBERG: Pages.

7 THE COURT: Pages, I assume. All right.

8 MR. ZILBERBERG: Pretty close to it in documents
9 though; they're not multipage documents.

10 THE COURT: But produced by whom?

11 MR. ZILBERBERG: Produced by --

12 THE COURT: I mean, we have a lot of entities or
13 individuals here.

14 MR. ZILBERBERG: Well, some of the individuals do not
15 have -- we have already advised the trustee that some of the
16 individuals do not have any responsive documents.

17 THE COURT: With respect to Mr. Gottehrer, are there
18 any responsive documents?

19 MR. ZILBERBERG: I don't think so. I don't think so.

20 THE COURT: Have you said that after a reasonable
21 search, the details of which you --

22 MR. ZILBERBERG: Yes.

23 THE COURT: -- may wish to set forth, you are unable
24 to identify any responsive documents --

25 MR. ZILBERBERG: Yes.

1 THE COURT: -- in the possession, custody or control
2 of Mr. Gottehrer?

3 MR. ZILBERBERG: Yes, yes.

4 THE COURT: How about Mr. Joel Klein?

5 MR. ZILBERBERG: Same. Okay --

6 THE COURT: How about --

7 MR. ZILBERBERG: Abraham Klein --

8 THE COURT: Caring Home we're going to set to the
9 side. Abraham Klein we're going to set to the side for the
10 moment. Mr. Escobar --

11 MR. ZILBERBERG: I believe that we may have some
12 documents from Mr. Escobar.

13 THE COURT: All right. But it seems to me that it may
14 be that as to two of these indiv -- as to two of the subjects
15 of the 2004 orders, Mr. Gottehrer and Mr. Klein, Joel Klein, it
16 may be that, subject to your satisfying Mr. Campo that you have
17 conducted a reasonable search in answering whatever questions
18 he may wish your answers to, it may be that we can mark those
19 matters off. I'd like to know if that's the case; I'd like to
20 simplify this.

21 MR. CAMPO: Your Honor, I --

22 THE COURT: With respect to Caring and Mr. Klein,
23 Abraham Klein, I anticipate there will be significant
24 additional --

25 MR. ZILBERBERG: That's what I --

1 THE COURT: -- back and forth between the parties
2 which I encourage you to undertake in the promptest possible
3 time frame.

4 MR. ZILBERBERG: Yes, Your Honor.

5 THE COURT: And Mr. Escobar seems to be somewhere
6 between the two; you'll figure that out.

7 MR. ZILBERBERG: I -- yes.

8 MR. CAMPO: Your Honor, the only issue with respect to
9 Mr. Klein and Mr. Gottehrer would be one --

10 THE COURT: Mr. Joel Klein?

11 MR. CAMPO: I'm sorry. Mr. Joel Klein --

12 THE COURT: Thank you.

13 MR. CAMPO: -- and Mr. Gottehrer -- thank you, Your
14 Honor -- is that Mr. Zilberberg's representation that neither
15 of them have documents, we'd like confirmation of that.

16 THE COURT: You'll work on that.

17 MR. CAMPO: And, Your Honor, notwithstanding that they
18 don't have documents, they're both, as we understand it, people
19 who were involved in the time frame during which Mr. Klein and
20 Ms. Persaud had their disputes regarding Caring. So while they
21 may not have responsive documents, that doesn't mean we still
22 wouldn't want to take their examination.

23 THE COURT: But you don't -- I appreciate that it not
24 meaning that you don't is different than your saying that it
25 does mean that you do, and it seems to me that's a question for

1 another day. I would encourage the trustee in the exercise of
2 business judgment in this intensely litigated matter to
3 prioritize the discovery that you do, not as if you were
4 preparing to try a case but with the -- but always having in
5 mind that the job here is to marshal in the most cost-effective
6 way possible the assets of this estate for the benefit of
7 creditors.

8 MR. CAMPO: We understand that, Your Honor.

9 THE COURT: All right. Well, I --

10 MR. CAMPO: And all I'm saying is that at this point
11 carrying those 2004s are fine subject to getting confirmation
12 from Mr. Klein -- I'm sorry -- from Mr. Zilberberg --

13 THE COURT: Yeah.

14 MR. CAMPO: -- but then also at that point allowing
15 the trustee an opportunity to assess whether he feels the need
16 to examine either of them.

17 THE COURT: What you need to do and what sequence you
18 need to do it in, I think that makes a lot of sense --

19 MR. CAMPO: Thank you.

20 THE COURT: -- having in mind that there is a
21 difference between the discovery you take to try a case and the
22 2004 relief that you need to pursue the marshalling of
23 assets --

24 MR. CAMPO: Right.

25 THE COURT: -- consistent with the trustee's duties

1 under the Bankruptcy Code.

2 MR. CAMPO: Um-hum.

3 THE COURT: All right. So it seems to me that the
4 path forward with respect to the 2004s is that the parties
5 confer, and I direct you to confer in the production of
6 documents in compliance with the orders that have been entered
7 and that we have a time frame that will be a sensible time
8 frame to return, understanding it may take a week or two to
9 complete that process and then some brief additional time to
10 complete whatever production which you should be doing on a
11 rolling basis in response to your discussions.

12 MR. CAMPO: Well, Your Honor --

13 THE COURT: I want to come back to scheduling, but
14 let's -- would anyone else like to be heard on the 2004s? I
15 think I've heard from the parties-in-interest.

16 With respect to the motion that has been on the
17 Court's calendar for some time with respect to the violation of
18 the automatic stay, I'd like to hear from the parties on how
19 you think it makes sense to proceed. I can tell you that I am
20 thinking that it's time to schedule -- time to argue that and
21 get you a decision. I'm concerned about letting an issue as
22 significant as that -- if it is an issue that the parties wish
23 to press, I'm concerned about having it remain unaddressed for
24 as long as it has remained unaddressed, understanding that this
25 perhaps, like other issues, was affected and perhaps put in

1 some abeyance by the pendency of the --

2 MR. CAMPO: Your Honor, I guess --

3 THE COURT: -- counsel motion.

4 MR. CAMPO: -- we are prepared to move forward and
5 argue that. I believe that it is fully briefed.

6 THE COURT: I think it may well be.

7 MR. CAMPO: But it has been a while since we've all
8 looked at these, and certainly, we haven't been looking at it
9 because of the issues concerning --

10 THE COURT: Understood.

11 MR. CAMPO: -- until the retention was more clarified.

12 So my suggestion would be, again, thinking that I believe I
13 know that there's going to be a request by Ms. Persaud to
14 adjourn her matters, that if we were to have a shorter
15 adjournment on all the matters we would give ourselves the
16 opportunity to discuss the 2004s, and perhaps Mr. Zilberberg
17 and I can also discuss whether we think there's any need for
18 any supplemental briefing with respect to that and then come
19 back to the Court and ask the Court to then schedule for an
20 oral argument shortly thereafter.

21 THE COURT: A supplemental briefing on the context of
22 the state court judgment issue?

23 MR. CAMPO: Correct.

24 THE COURT: Some of the issues framed there, including
25 the question of whether the debtor would seek stay relief, have

1 come up in different contexts. We did have the debtor's
2 motion, not the estate's motion, but the debtor's motion for
3 stay of relief.

4 MR. CAMPO: Correct.

5 THE COURT: It's a good question posed by the issues
6 in that -- that were identified in that motion whether stay of
7 relief of some sort doesn't make sense but not -- but sought by
8 the right parties or, I suppose, proposed by the Court. You
9 know, you do need definition and resolution of the issue with
10 respect to the status of the arbitration award. I think at
11 some point in the papers, and I can't point you to it with
12 precision, but there is the suggestion in the record that what
13 the appellate division did was somehow overturn the arbitration
14 award which I think would misstate the record. I think it did
15 neither less nor more than overturn the confirmation of the
16 award, but --

17 MR. CAMPO: It did, Your Honor.

18 THE COURT: -- finding that there could be a
19 meritori -- but on the basis of the prospect of meritorious
20 defense --

21 MR. CAMPO: Right.

22 THE COURT: -- which raises a whole host of issues
23 that need to be resolved and may well best be resolved in the
24 court where they're pending, so --

25 MR. CAMPO: And Your Honor, the issue there is, is

1 that we have all sorts of disputes between the debtor and
2 Mr. Klein with respect to whether or not the debtor even
3 executed the agreement that forms the basis of Mr. Klein's
4 position that the disputes under that alleged agreement were
5 even subject to arbitration.

6 THE COURT: Or to the extent that it -- or on whose
7 behalf it was executed; I recall the issue from a prior
8 hearing. I come back again to the notion that in a Chapter 7
9 case every decision that is made on how to move forward that is
10 a trustee decision as opposed to a court's decision --

11 MR. CAMPO: Correct.

12 THE COURT: -- needs to be made in the context of
13 sensible business judgment.

14 MR. CAMPO: And Your Honor, in that --

15 THE COURT: And I really worry about that here because
16 it is possible that you can spend hundreds of hours -- all of
17 you can spend -- in perhaps the interest of terrific lawyering
18 but not necessarily the most appropriate estate administration
19 or pursuit of a creditor's interests, it's possible to spend
20 tens or hundreds of thousands of dollars of legal fees in
21 winning issues at the end of which we will have some court
22 decisions in the state and federal court and no money left for
23 creditors.

24 MR. CAMPO: Well, Your Honor, one of the things that
25 the trustee believes, and we've not heard from Mr. Klein on, is

1 the fact that at this point, Your Honor, there is an adversary
2 proceeding before you, which is the Klein v. Pereira, and
3 there's the counterclaim, which really puts those issues
4 squarely before this Court with respect to what transpires and
5 who owns Caring.

6 THE COURT: Well, I'm not sure --

7 MR. CAMPO: And in fact, I believe -- well, I believe
8 that Mr. Klein --

9 THE COURT: I'm aware of the docket.

10 MR. CAMPO: Again, Your Honor, I wasn't involved that
11 phase of the case until now which is -- we're going to catch up
12 on it, but my understanding is, is that Mr. Klein's filed a
13 declaratory judgment action for declaration that the estate has
14 no interest in Caring. And Mr. Pereira, as trustee, through
15 his law firm, Pereira & Sinisi, responded, answered,
16 counterclaimed, and there's, I think, been an answer to the
17 counterclaim. So I think issues' been joined on that.

18 THE COURT: Yes, it has, on November 15th.

19 MR. CAMPO: And now the question is, is where do we go
20 with respect to discovery on that adversary proceeding --

21 THE COURT: Well, and that's on --

22 MR. CAMPO: -- because there's where Your Honor --

23 THE COURT: And we're going to get there, Mr. Campo.

24 MR. CAMPO: I agree, Your Honor. There's where I
25 think -- and I think the trustee is very cognizant of this --

1 that before he proceeds down the path of doing -- of focusing
2 where the efforts are best put, we're going to make sure that
3 we're going to get into a position where we're going to get a
4 final determination with respect to those rights, and those are
5 the rights that really impact this estate because it is Caring
6 that has a significant amount of value. While the trustee is
7 operating the Liberty estate right now, and I think on that
8 score, Your Honor, we recently submitted a further stipulation
9 to be so ordered to extend his operations.

10 THE COURT: I think it was so ordered.

11 MR. CAMPO: Oh, I'm sorry, Your Honor; it might have
12 been already. We submitted one last week that kicks it out for
13 another ninety days.

14 THE COURT: I'm quite sure that's on the docket.

15 MR. CAMPO: All right. I'll check it. Thank you,
16 Your Honor.

17 THE COURT: I know it's off my desk anyway.

18 MR. CAMPO: It may be -- it may have already been
19 entered. But the issues now really are the focus of where are
20 we with respect to Caring.

21 THE COURT: I think that's right.

22 MR. CAMPO: And we really look forward to the
23 opportunity to working with Mr. Zilberberg directly now.

24 THE COURT: I'm sure you both look forward to seeing
25 if there's an effective way to resolve what has been the

1 subject of such animated litigation in so many fora.

2 Here's how I propose to proceed. I think you do have,
3 now, at least a good sense of who's involved. You need a
4 little bit of time because you have a lot to do. You've got to
5 think about those 2004 issues. I'm going to ask you to do that
6 and be prepared to report on each of them, and I would like you
7 to view them as my docket reflects them and as the applications
8 indicate as discrete; they're not just six stuck together.

9 MR. CAMPO: Um-hum.

10 THE COURT: They are -- I want you to peel them apart,
11 understand that there seem to be -- maybe five, I should say,
12 not six -- two or three categories.

13 I think it can't be again said on this record that as
14 to Caring and as to Abraham Klein, there's going to be some
15 work to do. As to Mr. Gottehrer and Joel Klein, it may be a
16 different category.

17 MR. CAMPO: Agreed.

18 THE COURT: Of course, you can assume that whatever
19 disposition there is would not be with prejudice to your rights
20 to seek or oppose further inquiry down the road if it turns out
21 that it's appropriate to focus on some but not others of these
22 issues. We have the motion with respect to the state court.

23 I have to say, it's a big issue there for me that the
24 parties participated both here and there, eyes open, and I
25 doubt there is case law that would support the notion that you

1 can let something run its course, see if you win or lose, and
2 then seek to cry foul and a violation of the stay. That would
3 concern me. It would surprise me if the law supported that. I
4 don't know if that's the record here, and I make these
5 observations not as conclusions of law but as serious and
6 difficult questions that we will have to come back to as a
7 practical matter. You can resolve them.

8 You may find -- I anticipate that you will find
9 yourselves being asked about a referral of the question, in all
10 the ways it comes up, of the Caring asset to mediation at our
11 next hearing, and you should be ready to address that question
12 and substantively.

13 So I think your agenda, from my perspective, in our
14 next -- before our next series of hearings on these matters, is
15 to confer with an eye toward resolution on the issues that are
16 raised in the 2004, the production that has currently been
17 ordered, it is the subject of a court order, you need to
18 comply.

19 With respect to further relief you need, you need to
20 give that careful thought, see what you can come up with
21 consensually. Come back; we'll talk about whether I want
22 further briefing. You can look for guidance from the Court on
23 that after I hear from you.

24 MR. CAMPO: Thank you, Your Honor.

25 MR. ZILBERBERG: Your Honor --

1 THE COURT: Wait. Please let me finish --

2 MR. ZILBERBERG: I'm sorry.

3 THE COURT: -- Mr. Zilberberg.

4 With respect to the stay violation motion, number 7 on
5 the docket, number 179 in the case docket, and the Klein v.
6 Pereira adversary proceeding, the underlying issues, I think,
7 are pretty closely related, and when we come back, I will be
8 interested in hearing about the status and keenly interested in
9 your collective or separate positions on how best to move those
10 matters forward. I'm not going to today set a schedule for
11 additional briefing on the motion, but if it turns out that
12 that's a motion that needs to be decided, you'll get a
13 prompt -- you'll get a quick schedule and a prompt date to come
14 back and argue that --

15 MR. CAMPO: Thank you.

16 THE COURT: -- which hopefully will be an incentive
17 also to think about ways to resolve it. As to the matters
18 where we need Ms. Persaud's personal counsel here, you know,
19 it's nearly two hours after I scheduled time.

20 MR. CAMPO: Yeah.

21 THE COURT: As for today, we're going to carry those
22 matters. In the future, I say as earnestly as I can say it, we
23 can't make progress without people here. When people are late,
24 it burdens every single lawyer in this courtroom and every
25 party, so.

1 Mr. Zilberberg. Excuse me for one second.

2 MR. ZILBERBERG: Sure.

3 THE COURT: Yes.

4 MR. ZILBERBERG: Your Honor, I just wanted to point
5 out that we will try to confer as diligently as possible with
6 Mr. Campo. I will be overseas next week for about ten days,
7 but I will try to reach out to him before I go, and if we
8 can't, then as soon as I get back, it will be first thing on
9 the calendar.

10 MR. CAMPO: Well, hopefully, Mr. --

11 THE COURT: Anyone who can be overseas for ten days in
12 one week can certainly get the matters in this case resolved.

13 MR. CAMPO: That's right.

14 MR. ZILBERBERG: There's the weekends, Your Honor.

15 THE COURT: Understood.

16 MR. CAMPO: Your Honor, I would just want to point out
17 that --

18 THE COURT: Next week is a little sooner than I was
19 thinking of getting you back.

20 MR. ZILBERBERG: No, not coming back.

21 THE COURT: It does give you some time this week to
22 get to work.

23 MR. ZILBERBERG: I'm going to reach out to him this
24 week.

25 THE COURT: Understood.

1 MR. CAMPO: Right.

2 THE COURT: All the more reason to get to work.

3 MR. CAMPO: And I would appreciate that.

4 THE COURT: Yeah.

5 MR. CAMPO: And then, of course, Your Honor, I think
6 if it would be -- it would be extremely helpful to us if, in
7 Mr. Zilberberg's absence when he is overseas, that
8 Mr. Lewittis, who's actually the attorney who's been handling
9 the 2004s on behalf of the --

10 THE COURT: You all work that among yourselves.

11 MR. CAMPO: We'll work it all out.

12 THE COURT: You work it all out. I've said what I
13 have to say about representation here --

14 MR. CAMPO: Great.

15 THE COURT: -- at least for the week.

16 MR. ZILBERBERG: Thank you, Your Honor.

17 THE COURT: All right. So just so I have an
18 understanding of scheduling, the week of the 12th is not a
19 practical week for the parties to make progress, but it seems
20 to me then you come back and you have a couple of weeks before
21 the holiday period begins in order to make a lot of progress
22 which I greatly anticipate. We then come into the holiday
23 period. Would it be impractical to try to schedule court
24 during that? I should think so. So we're probably looking at
25 something like April -- mid-April, April 19th.

1 MR. CAMPO: Your Honor, the only thing I would ask is,
2 if it's at all possible, would be to have a quicker, a shorter
3 date so that we can confer in the event the parties -- I mean,
4 that's a lengthy time. I think we should be able to resolve --
5 at least get to know where we are within a couple of weeks, and
6 I was hoping maybe we could have a hearing before --

7 THE COURT: Something the week of April 2nd?

8 MR. CAMPO: Or even the week of the 26th. Does that
9 work, Your Honor?

10 THE COURT: I think you --

11 MR. CAMPO: March.

12 THE COURT: I want to be realistic about what's --

13 MR. CAMPO: Okay.

14 THE COURT: -- going to be practical here. Let's look
15 at the week of the 2nd; 2nd, 3rd, 4th, those are really, really
16 busy court days --

17 MR. CAMPO: Um-hum.

18 THE COURT: -- because everything that happens
19 thereafter.

20 MR. CAMPO: Right, sure.

21 THE COURT: I need some time that week to get this
22 work done. Otherwise, we're booked morning and afternoon every
23 day of that week. So 9:30 on the 4th --

24 MR. ZILBERBERG: It works for me, Your Honor.

25 THE COURT: -- understanding that this is really going

1 to be a focused working session on all of the case matters,
2 case administration, case management. I won't be scheduling
3 the argument on the motion then. Does it work?

4 MR. ZILBERBERG: Yes.

5 THE COURT: Does that work for you?

6 MR. ZILBERBERG: Your Honor, first of all, I may be
7 out of town, I don't know yet. It's a family issue with
8 Passover, and Mr. Lewittis, as well, has just told me that
9 he'll be away. I will --

10 THE COURT: So how many -- Mr. Zilberberg, let me do
11 it this way. When are you available? Not that that's going to
12 be ultimately definitive. At some point, the Court is in
13 control of the Court's calendar, but --

14 MR. ZILBERBERG: Understood, understood. I have
15 something on the 17th, I can -- in a different court, I could
16 move it if necessary, April 17th.

17 THE COURT: That's pretty far out --

18 MR. CAMPO: That's pretty far out, Your Honor.

19 THE COURT: -- and that doesn't work for me. If the
20 idea is to do something in the week of April 2nd, are you
21 available on the 2nd?

22 MR. ZILBERBERG: I'm looking at Mr. Lewittis who's not
23 available.

24 THE COURT: Are you available on the 3rd?

25 At some point, it's really not my job to negotiate my

1 schedule with you. I think you know that. I'm doing my best
2 to be accommodating, but you're asking me to go out so far
3 without any meaningful assurance of progress. I don't want to
4 come back on the 17th or the 24th and find out that we really
5 are exactly where we are today.

6 MR. ZILBERBERG: Your Honor, I've already told
7 Mr. Campo that there are about 2,000 documents additional that
8 are -- 2,000 pages, I'm sorry, to be more exact, that will be
9 delivered to him during my absence. I just want to finish a
10 review of them before they go out.

11 MR. CAMPO: Right.

12 MR. ZILBERBERG: I have said that we will diligently
13 work with Mr. Campo during this time period to try to work out
14 whatever we can reach by accommodation.

15 THE COURT: Okay.

16 MR. ZILBERBERG: And then we're going to come back
17 into court to deal with those things that we can't. In
18 addition, Mr. Campo, in order to fashion his response, is going
19 to have to review that which I send to him.

20 THE COURT: Understood.

21 MR. CAMPO: But, Your Honor --

22 MR. ZILBERBERG: So the date is really not -- it's a
23 question of whether it's a few days before the holiday or a few
24 days after the holiday.

25 MR. CAMPO: Well, Your Honor, it's really a little

1 bit --

2 THE COURT: Here's what I'm going to do. You can have
3 the 23rd or the 24th. Tell me what time on the 24th in the
4 morning, 23rd I can work with morning or afternoon --

5 MR. CAMPO: Your Honor, we're talking --

6 THE COURT: -- but I'm going to direct that you file a
7 report of the status of these matters in advance of that, and
8 I'd like it to be a joint report. All right?

9 MR. CAMPO: Your Honor, we're talking about April 23rd
10 or 4th?

11 THE COURT: Yes.

12 MR. ZILBERBERG: I can do the 24th.

13 THE COURT: All right.

14 MR. CAMPO: Your Honor --

15 THE COURT: The 24th at 9 o'clock.

16 Mr. Campo, I am investing the time in the parties
17 making good progress here.

18 MR. CAMPO: Your Honor, I appreciate that.

19 THE COURT: If it turns out that the investment is a
20 bad investment, I'll be well advised next time. All right?

21 MR. CAMPO: All right, Your Honor. I appreciate
22 that --

23 THE COURT: All right. April 24th at 9 o'clock.

24 MR. CAMPO: -- because we're a little concerned about
25 that length.

1 THE COURT: I am too, but you've also had what,
2 twenty-four hours to get up to speed in the case. That means
3 you have to time you need, you have the time to prove me right
4 in having confidence in what you're saying about resolving
5 these issues, okay? And I'm going to want to hear your views
6 on a referral of this matter to mediation, I mean specifically
7 the dispute about the Caring asset.

8 And I'd like you, between now and then, also to have
9 reviewed with careful attention the mediation registers of this
10 court and also the Southern District so that you know what
11 names would not be possible and what names you would like to
12 see if I go down that path. All right? And we'll collect all
13 of that in an appropriate order, scheduling order that we'll
14 get up on the docket.

15 I note that we still have no attorney here for the
16 defendant, Ms. Persaud, in 10-1228, the adversary proceeding,
17 and I think that could be the only matter that's directly
18 relevant to. We'll note that nonappearance on the docket.

19 Okay. Thank you very much. I'm sorry we couldn't
20 make more progress. I'm glad for the progress we made, and I
21 will see you on that date. And if you request a conference
22 before then, and if it makes sense, we'll schedule that, too.
23 I think I now have --

24 MR. CAMPO: And Your Honor, you said a joint status
25 report you would like?

1 THE COURT: I would like a joint status report, yes.

2 Thank you.

3 MR. ZILBERBERG: Thank you, Your Honor.

4 THE COURT: I did.

5 (Pause)

6 MR. CAMPO: Your Honor, when would you like that
7 report filed, the date?

8 THE COURT: When do you think makes sense?

9 MR. CAMPO: Whatever makes sense?

10 THE COURT: No. I'm sorry. When do you think makes
11 sense? I'm going to give you a date, but --

12 MR. CAMPO: Oh, I would think that we just need to
13 make sure you have it however long in advance that you'll need
14 to review it.

15 THE COURT: I'd like it at -- well, I'm quite mindful
16 of the point you made about -- I'd say March 30th. March 30th
17 make sense? It's the end of the time period that I think --

18 MR. CAMPO: That's fine, Your Honor.

19 THE COURT: -- a good number of you is available.

20 MR. CAMPO: And that will actually --

21 THE COURT: Written status report March 30th.

22 MR. CAMPO: That will be great because to the extent
23 that -- may I just reflect that obviously if there's things
24 that we don't agree upon, then --

25 THE COURT: It'll be a --

1 MR. CAMPO: It'll be a separate.

2 THE COURT: It'll turn up in the report but --

3 MR. CAMPO: Okay, thank you.

4 THE COURT: -- or with separate parts. But I think
5 that is at the end of the period of time that includes a
6 significant amount of time when you're all available --

7 MR. CAMPO: No, we --

8 THE COURT: -- and you're also reachable knowing --
9 having some sense of how busy your practices are.

10 MR. CAMPO: That's a very practical date because by
11 then we'll have some focus as to what these upcoming issues
12 will be and whether or not the Court has --

13 THE COURT: You'll have to find what you need to work
14 on in the next three weeks.

15 MR. CAMPO: We will.

16 THE COURT: All right. Thank you so much. Thank you
17 for coming in.

18 MR. ZILBERBERG: Thank you.

19 THE COURT: I know it's a hard case. I appreciate
20 your efforts.

21 (Whereupon these proceedings were concluded at 11:29 AM)

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.

DAVID RUTT

AAERT Certified Electronic Transcriber CET**D-635

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: March 8, 2012

United States Bankruptcy Court

Eastern District of New York
271 Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800

IN RE:

CASE NO: 1-10-44815-ess

Christine Persaud

SSN/TAX ID:

CHAPTER: 7

xxx-xx-0247

DEBTOR(s)

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

Notice is hereby given that:

A transcript of the proceeding held on March 6, 2012 was filed on March 9, 2012 .

The following deadlines apply:

The parties have until March 16, 2012 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a Transcript Redaction Request is March 30, 2012.

If a Transcript Redaction Request is filed, the redacted transcript is due April 9, 2012.

If no such Notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is June 7, 2012 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber Veritext (888-706-4576) or you may view the document at the public terminal at the Office of the Clerk.

Dated: March 9, 2012

For the Court, Robert A. Gavin, Jr., Clerk of Court

Notice Recipients

District/Off: 0207-1
Case: 1-10-44815-ess

User: btaylor
Form ID: 295

Date Created: 3/9/2012
Total: 6

Recipients of Notice of Electronic Filing:

tr	John S. Pereira	pereiraesq@pereiralaw.com
aty	John P Campo	John.Campo@troutmansanders.com
aty	Mendel Zilberberg	mz@amalgamail.com
aty	Stephen N Preziosi	stephenpreziosi@gmail.com

TOTAL: 4

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Christine Persaud	86-25 Van Wyck Expressway, Apt. 506	Jamaica, NY 11435
aty	Samuel J. Landau	250 West 57th Street	New York, NY 10107

TOTAL: 2